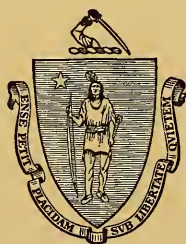


NINTH ANNUAL REPORT
OF THE
BOARD OF COMMISSIONERS
FOR THE
PROMOTION OF UNIFORMITY OF LEGISLATION
IN THE UNITED STATES.

DECEMBER 31, 1917.



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The Commonwealth of Massachusetts.

NINTH ANNUAL REPORT

OF THE

BOARD OF COMMISSIONERS

FOR THE

PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES.

To His Excellency the Governor and the Honorable Council of the Commonwealth of Massachusetts.

The Board of Commissioners for the Promotion of Uniformity of Legislation in the United States submits this its ninth annual report.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The National Conference of Commissioners on Uniform State Laws was organized under the name of Conference of Commissioners on Uniform State Laws at a meeting of representatives of various States held at Saratoga Springs, N. Y., on the twenty-fourth to the twenty-seventh days of August, 1892, at which meeting there were present twelve commissioners, representing seven States. Massachusetts then had three commissioners, Edmund H. Bennett, Leonard A. Jones and Frederick J. Stimson, and we believe that they were among the twelve members present at this first meeting.

Subsequent meetings have been held at times and places as follows:—

Nov. 15-16, 1892, New York City, N. Y.
Aug. 31, 1893, Milwaukee, Wis.
Aug. 22-23, 1894, Saratoga Springs, N. Y.
Aug. 26-27, 1895, Detroit, Mich.
Aug. 15-17, 1896, Saratoga Springs, N. Y.
Aug. 23-24, 1897, Cleveland, Ohio.
Aug. 15-17, 1898, Saratoga Springs, N. Y.
Aug. 26-28, 1899, Buffalo, N. Y.
Aug. 25-29, 1900, Saratoga Springs, N. Y.
Aug. 19-20, 1901, Denver, Colo.
Aug. 25-26, 1902, Saratoga Springs, N. Y.
Aug. 24-25, 1903, Hot Springs, Va.
Sept. 22-24, 1904, St. Louis, Mo.
Aug. 18-23, 1905, Narragansett Pier, R. I.
Aug. 22-25, 1906, St. Paul, Minn.
Aug. 22-24, 1907, Portland, Me.
Aug. 21-24, 1908, Seattle, Wash.
Aug. 19-23, 1909, Detroit, Mich.
Aug. 25-29, 1910, Chattanooga, Tenn.
Aug. 24-28, 1911, Boston, Mass.
Aug. 21-26, 1912, Milwaukee, Wis.
Aug. 26-30, 1913, Montreal, Can.
Aug. 14-19, 1914, Washington, D. C.
Aug. 10-16, 1915, Salt Lake City, Utah.
Aug. 23-29, 1916, Chicago, Ill.
Aug. 29-Sept. 3, 1917, Saratoga Springs, N. Y.

The twenty-seventh annual meeting of the National Conference of Commissioners on Uniform State Laws was held in the Supreme Court room, appellate division, in the town hall at Saratoga Springs, N. Y., Aug. 29 to Sept. 3, 1917, inclusive. At this meeting there were present sixty-five commissioners, representing thirty-six jurisdictions.

The National Conference of Commissioners on Uniform State Laws is composed of commissioners appointed by legislative or executive authority from the States, the District of Columbia, the territory of Alaska and the island possessions of the United States. The meetings of the national conference have been held regularly immediately preceding the annual meeting of the American Bar Association on the dates and at the places above stated.

The purpose of the organization, as its name imports, is to promote uniformity of legislation on subjects of common interest throughout the United States. The commissioners are selected from the legal profession, and serve without compensation or emoluments of any sort. Many of them have for years paid their own expenses, and all of them have rendered unstinting services for the public welfare. There is nothing of a personal or private nature about any of the aims or objects of the national conference. Proposed acts are carefully drawn by a special committee of trained lawyers, assisted by experts in many instances, and are printed, distributed and discussed in the national conference at more than one annual session. When finally approved by the conference the uniform acts are recommended for general enactment throughout the jurisdictions of the United States and are submitted to the American Bar Association for its approval. Each uniform act is thus the fruit of more than one tentative draft submitted to the criticism, correction and emendation of the commissioners, and represents the experience and the judgment of a select body of lawyers chosen from every part of the United States.

The work of the twenty-seventh annual meeting briefly stated was as follows: —

After careful consideration by the commissioners the proposed uniform fraudulent conveyances act, the proposed uniform conditional sales act and the proposed uniform automobile act were recommitted to their respective committees for redrafting.

The proposed uniform occupational diseases act was fully explained and discussed and recommitted for further action by the committee.

The proposed uniform vital and penal statistics act, because of the absence of Col. Nathan William MacChesney in the military service of the United States, was not taken up for detailed consideration but was recommitted to the committee to be taken up and acted upon at the next meeting of the conference.

The proposed uniform flag law was finally approved and recommended to the various States for enactment.

Officers, 1917-18.

The officers elected for 1917-18 were as follows:—

W. A. Blount, Pensacola, Fla., *President*.

Andrew A. Bruce, Bismarck, N. D., *Vice-President*.

W. O. Hart, New Orleans, La., *Treasurer*.

George B. Young, Montpelier, Vt., *Secretary*.

The Massachusetts commissioners are members of the following committees:—

HOLLIS R. BAILEY.

Standing Committee on Scope and Program.

Standing Committee on Legislation.

Special Committee on Marriage and Divorce.

Special Committee on Compacts and Agreements between States.

Chairman, Special Committee on Occupational Diseases.

SAMUEL WILLISTON.

Special Committee on Commercial Law.

Special Committee on Legislative Drafting.

JOSEPH F. O'CONNELL.

Special Committee on Incorporation.

Special Committee on Vital and Penal Statistics.

Special Committee on Automobile Legislation.

DOINGS IN MASSACHUSETTS.

Your Board last year recommended the enactment of the uniform partnership act and the uniform act for the extradition of persons of unsound mind.

Early in the year our attention was called to the fact that the greater part of the uniform act for the extradition of persons of unsound mind was already law in Massachusetts, having been enacted in 1909 (Acts of 1909, chapter 504, sections 87-90) on the recommendation of a commission appointed by Governor Guild for the revision and codification of the laws of Massachusetts relating to the insane. This commission consisted of Dr. George T. Tuttle, superintendent of the McLean Hospital, James F. Curtis, Esq., and Dr. Henry R. Stedman. The immediate cause of its adoption was the savage attack upon Postmaster Morgan in New York City on Nov. 9, 1908, in which he was shot and

seriously wounded by an insane man who had escaped from the hospital in Worcester, Mass. As the law then was, his extradition was impossible and he remained at large until the shooting aforesaid when he committed suicide. If the proposed uniform act which is a little broader than the Massachusetts law is generally adopted by the States, a serious danger to the public will be minimized.

The uniform partnership act was referred to the joint judiciary committee. Your Board urged its adoption, and there was no opposition. The judiciary committee, however, did not recommend its enactment.

The uniform partnership act has now been adopted in Alaska, Illinois, Maryland, Michigan, Pennsylvania, Tennessee, Wisconsin and Wyoming.

Its adoption in Massachusetts we feel sure is highly desirable. It will remove a number of ambiguities which now exist in the law, and in the matter of winding up partnerships where there is real estate not needed to pay debts will work a decided improvement in the law.

The Massachusetts Bar Association has appointed a special committee on uniform State laws and the same is true of the Massachusetts Conveyancers Association.

With the help of these committees we hope to accomplish more this year than heretofore in the way of securing the adoption of uniform acts in Massachusetts.

LEGISLATION RECOMMENDED.

Your Board recommends the enactment of the uniform partnership act, the uniform limited partnership act, and the uniform flag law.

OCCUPATIONAL DISEASES.

The matter of drafting a uniform occupational diseases act was taken up by the National Conference of Commissioners on Uniform State Laws two years ago, and a special committee was appointed of which your commissioner, Hollis R. Bailey, was made chairman. This committee has done a good deal of work and has drafted an act along the lines followed in England and elsewhere.

The act is intended as a supplement or addition to the Workmen's Compensation Acts in the several States. There is much need of such a law in Massachusetts, where great uncertainty now exists as to what disability resulting from disease comes within the terms of the Workmen's Compensation Law.

This proposed act does not interfere with the so-called health insurance act which Governor McCall last year recommended in his annual message.

A copy of the report of the special committee on occupational diseases with its draft of an act is annexed hereto as an appendix to this report.

EXPENDITURES OF THE BOARD.

Feb. 7, 1917, Wright & Potter, printing additional copies of partnership act,	\$10 13
March 14, 1917, contribution on behalf of the Commonwealth towards the general expenses of the conference of commissioners,	100 00
March 21, 1917, Wright & Potter, printing 800 copies of annual report,	15 54
May 2, 1917, Samuel Williston, traveling and other expenses,	35 60
May 2, 1917, Hollis R. Bailey, traveling and other expenses,	50 31
Oct. 10, 1917, Hollis R. Bailey, traveling and other expenses,	52 15
Oct. 10, 1917, Samuel Williston, traveling and other expenses,	96 46
Oct. 17, 1917, Jos. F. O'Connell, traveling and other expenses,	99 03
Dec. 19, 1917, S. Williston, traveling and other expenses,	35 32
	<hr/>
	\$494 54

HOLLIS R. BAILEY, *Chairman.*
 SAMUEL WILLISTON,
 JOSEPH F. O'CONNELL.

APPENDIX.

REPORT OF THE SPECIAL COMMITTEE ON OCCUPATIONAL DISEASES TO THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

OCCUPATIONAL DISEASES.

Your committee during the year which has elapsed since its last report was submitted has done considerable work in the way of study and investigation. Early in the year it sent out copies of its tentative draft of an act to all members of the conference, to all the Governors of the different States, to all members of industrial accident boards and other similar bodies and to a number of judges, and invited suggestions. A number of suggestions were received and considered and considerable interest in the subject was manifested.

Your committee has received much valuable assistance from P. Tecumseh Sherman, Esq., and J. P. Chamberlain, Esq., of New York, who have devoted a great deal of time to the study of the subject.

Our draft of last year has been revised very considerably, and, as your committee believes, has been greatly improved.

The subject of occupational diseases has been dealt with in Bulletin of the United States Bureau of Labor Statistics (Whole Number 203), Workmen's Insurance and Compensation Series No. 8, published in January, 1917. It appears from this bulletin that the subject of occupational diseases has received attention from the United States Attorney-General, the solicitor of the Department of Commerce and Labor and the industrial accident boards and courts in Connecticut, Massachusetts, New York, Michigan, Ohio, Colorado, Illinois, New Jersey, Wisconsin and Pennsylvania. See the following cases relating to occupational diseases: —

Miller *v.* Am. Steel & Wire Co., 97 Atl. 345 (Conn.).

Johnson *v.* London Guarantee Etc. Co., 104 N. E. 735 (Mass.).

In re Hurle, 104 N. E. 336 (Mass.).

Naud *v.* King Sewing Machine Co., 159 N. Y. S. 910.

Adams *v.* Acme White Lead & Color Works, 148 N. W. 485 (Mich.).

Industrial Commission *v.* Brown, 110 N. E. 744 (Ohio).
Liondale Bleach etc., Works *v.* Ricker, 89 Atl. 929 (N. J.).
Baltimore & O. R. Co. *v.* Branson, 98 Atl. 225 (Md.).
Linnane *v.* Aetna Brewing Co., 99 Atl. 507 (Conn.).
Hartford Accident etc. Co. *v.* Indus. Acc. Com., 163 Pac. Rep. 225 (Cal.).

It is still true that none of the workmen's compensation acts which are held to include occupational diseases provide any proper machinery for awarding compensation for disability and death resulting from such diseases.

It is still true that no definition has been found which will serve to exactly classify occupational diseases.

We are still of the opinion that the only practical way of dealing with the matter is to make a schedule of those diseases which are found to result from certain employments or processes.

The words "occupational diseases" have two different meanings. They are used to describe —

First. — The large number of diseases to which the public at large is subject, but which *may* be caused or aggravated or accelerated by specific conditions of labor. This is the commonly accepted medical definition.

Second. — Those relatively few diseases to which the public at large, generally speaking, is not subject, but which are attendant upon and peculiar to specific industrial processes and for which the industry itself is wholly or principally responsible. This may be called the industrial definition.

Only diseases of the latter class can justly be made subjects of compensation. In the British Workmen's Compensation Act they are called "industrial diseases," to distinguish them from the first and more comprehensive class of occupational diseases. We, however, have preferred to adhere to the more popular title of "occupational diseases," though using the words only in the more restricted of the two above defined meanings. Therefore, "occupational diseases," when referred to in our draft, must not be confounded with the ordinary diseases or sicknesses which workmen suffer like other members of the community, such as rheumatism, tonsillitis or tuberculosis.

There is already a movement well started to have the larger class of occupational diseases taken care of by what is called health insurance.

We have drafted our proposed uniform occupational diseases act along the lines of the British Workmen's Compensation Act, 1906 (section VIII. and schedule III. as later amended). Other similar legislation is to be found in the Swiss Employers' Liability Law of 1881 now replaced by article 68 of the Sickness and Accident Insurance Law of 1911, the Ontario Workmen's Compensation Act of 1914, and the Manitoba Workmen's Compensation Act of 1916.

It should be realized that the placing upon employers of a liability for maladies contracted in their service will necessarily result in severe discrimination against those persons seeking employment who do not display the highest qualities of resistance to disease. This result will be unobjectionable if the liability is limited to apply only to those diseases peculiar to occupations extraordinarily dangerous to health and from which the weakly may properly be excluded; but this result will be extremely disadvantageous to workmen if the liability is applied extensively. It is advisable, therefore, that the schedule should include only such diseases as are clearly and almost entirely due to the nature of the employment.

In an article in the University of Pennsylvania Law Review for April, 1917, P. Tecumseh Sherman, Esq., has considered the whole question of occupational diseases with great care, and has furnished a large amount of valuable information in regard to the same. No one interested in this matter should fail to read this article.

In the notes which follow different sections of our proposed act we have in citing cases used the following abbreviations: —

Butterworth's Workmen's Compensation Cases, . . .	B.
Irish Law Times,	Ir. L. T.
Scottish Law Reporter,	S. L. R.
Law Times,	L. T.

Each member of the committee reserves the right to criticize the draft as now presented.

HOLLIS R. BAILEY, *Chairman*.
 NATHAN WILLIAM MACCHESNEY.
 C. A. SEVERANCE.
 CHARLES E. SHEPARD.
 GEORGE D. AYERS.
 W. H. FOLLAND.
 R. H. WILLIS.

DRAFT OF A UNIFORM OCCUPATIONAL DISEASES ACT,
BEING A SUPPLEMENT TO THE UNIFORM WORKMEN'S
COMPENSATION ACT.

AN ACT TO MAKE UNIFORM THE LAW RELATING TO COM-
PENSATION TO EMPLOYEES FOR DISABILITY OR DEATH
RESULTING FROM OCCUPATIONAL DISEASES.

Be it enacted, etc., as follows:

SECTION 1. *Right to Compensation.* — If a workman is disabled or dies and his disability or death is caused by one of the diseases mentioned in the schedule of diseases annexed to this act, and the disease is due to the nature of any employment in which the workman was engaged, he or his dependents shall be entitled to compensation as hereinafter stated.

NOTE. — See British act, section VIII., subsection 1.

This section follows the British act in requiring that the disease must be one of those enumerated in the first column of the schedule, but need not be caused by any of the processes enumerated in the second column of the schedule.

For the sole purpose and effect of the second column of the schedule see section 18 *infra*.

As to when a disease is due to an employment, see *Timpson v. Mowlem*, 8 B. 178.

As to when death is "caused by" a disease, see *Haylett v. Vigor*, 1 B. 282.

The British law (section VIII., subsection 1, clause (ii)) allows compensation also where a workman is "suspended" from his usual employment, under the Factory and Workshop Act, on account of having contracted an industrial disease. But the practice of suspension does not prevail in America and there is consequently no occasion for such a provision in our law.

SECTION 2. *Changes in Schedule.* — The industrial accident board shall from time to time recommend to the legislature such changes in said schedule of diseases as it shall find desirable.

NOTE. — In Great Britain new diseases may be and have been added to the schedule by departmental orders (section VIII., subsection 6). It is desirable that additions to the schedule of occupational diseases should emanate from the experience of the Industrial Accident Board, and not from the political inclinations of the Legislature.

SECTION 3. *Time Limit.* — Neither the workman nor his dependents shall be entitled to compensation for disability or death resulting from disease unless the disease is due to the nature of his employment within the twelve months previous

to the date of disablement, whether under one or more employers.

NOTE. — Under section 7 of the uniform Workmen's Compensation Act, construed in connection with section 4 of this act, death must result within () years from the date of disablement.

The twelve months' time limitation follows section VIII., subsection 1, of the British act. The disease must be actually contracted within that time limitation, it not being sufficient that the workman was employed under one employer for a short time within such time limit in the employment (occupation) to the nature of which the disease was due; if in fact such disease was contracted solely while engaged in that employment (occupation) under other employers during an earlier period. See *Dean v. Rubian Co.*, 7 B. 209.

It should be observed that the word "employment" is used in this act, as in the British act, in two distinct senses: (1) as meaning a particular industry or occupation; (2) as meaning the service of a particular employer.

SECTION 4. *Disablement treated as Accident.* — The disablement of a workman resulting from an occupational disease covered by this act shall be treated as the happening of an accident within the meaning of the act to which this act is a supplement.

NOTE. — This provision is derived from section VIII., subsection 1, clause (a) of the British act. It is also to be found in the Swiss law of 1911 (article 68), in the Ontario act (section 100 (1)) and in the Manitoba act (section 81-A).

SECTION 5. *Certifying Physicians.* — The (state board of health) under civil service rules shall, so far as they are needed, appoint one or more competent and suitable physicians in each (city and town,) whose duty it shall be to examine any workman, who so requests, and certify whether he is suffering from a disease mentioned in the schedule of diseases annexed to this act and whether he is thereby disabled from earning full wages at the work at which he was employed; also whether the disease is due to the nature of the employment, and the date on which the disability commenced.

NOTE. — In Great Britain the "certifying surgeons" are appointed under provisions of the Factory and Workshop Act, 1901 (section VIII., subsection 1, clause (1)); and their functions in respect of industrial diseases are prescribed in regulations (Regulations of June 21, 1907) promulgated by the Secretary of State under authority of section VIII., subsections 3 and 5.

A certificate from a certifying surgeon normally precedes a claim; but it need not precede the notice of disablement. See *Devine v. Metcalfe*, 45 Ir. L. T. 271.

As to the legal effect of a certificate — favorable, unfavorable or defective — and of failure to obtain a certificate, see British act, section VIII., subsections 2 and 4, clause (b); *McGinn v. Udston Co.*, 5 B. 559; *Birks v. Stafford Co.*, 6 B. 617; *Mapp v. Straker*, 7 B. 18.

SECTION 6. *Date of Disablement.* — For the purposes of this act the date of disablement, unless fixed by agreement of the parties shall be such date as the certifying physician certifies as the date on which disability commenced, or if he is unable to certify such a date, the date on which his certificate is given; *provided, however*, that if appeal is taken to the board under section seven, the date of disablement shall be such date as the board may determine.

But where a workman dies from an occupational disease covered by this act without having obtained a certificate stating the date on which such disability commenced, the date of his death shall be the date of disablement.

NOTE. — The first paragraph of this section follows closely section VIII., subsection 4 and subsection 4, clause (a) of the British act. The second paragraph has the same intent as section VIII., subsection 4, clause (b) of the British act, but is changed in expression to avoid a misconstruction to which the language of that subsection seems liable.

SECTION 7. *Disputed Cases.* — If an employer or a workman is aggrieved by the action of a certifying physician in giving or omitting or refusing to give a certificate as to disability or as to date or cause of disability, or if any other point is in dispute, the matter shall be dealt with by the industrial accident board upon a petition being filed with it.

NOTE. — Under the British act the appeal from the "certifying surgeon" is to the "medical referee" (section VIII., subsection 1, clause (f)), who is a regular official — *i.e.*, not specially designated for each case — appointed by the Secretary of State (section X., subsection 1) and whose decision, within his jurisdiction, is conclusive. See *Chuter v. Ford*, 8 B. 160.

As to the functions and jurisdiction of the medical referee upon appeal to him, see *Garrett v. Waddell*, 5 B. 507; *Jones v. Ebbw Vale Co.*, 3 B. 181; *Winters v. Addie*, 48 S. L. R. 940.

But where, as generally in the United States, there is a special board or commission to administer the compensation law it seems more appropriate that the appeal should lie to that board or commission, and that such board or commission should have general jurisdiction over all questions involved.

The jurisdiction and powers of the Industrial Accident Board in this connection would be governed by article IV. of the uniform Workmen's Compensation Act to which this act is a supplement (*cf.* section 21 of this act).

SECTION 8. *Medical Referee.* — The said board shall, in the first instance, appoint a suitable physician as medical

referee to investigate the case and make a report to the board upon the question of disability and the date and cause thereof.

NOTE. — See notes to section 7.

SECTION 9. *Fees of Physicians and Referees.* — The industrial accident board may make rules regulating the duties and fees of certifying physicians and medical referees under this act. These fees shall be paid by the State as the other expenses of the board are paid.

SECTION 10. *Workmen, when not entitled.* — If a workman at the time of his employment wilfully and falsely represents in writing that he has not previously suffered from the disease, which is the cause of disability or death, no compensation shall be payable.

NOTE. — This provision is adapted from section VIII., subsection 1, clause (b) of the British act. Absolute good faith is a proper condition to the extraordinary rights given to workmen under this law.

SECTION 11. *Which Employer liable.* — The total compensation due shall, except as provided in sections twelve and thirteen, be recoverable from the employer who last employed the workman in the employment to the nature of which the disease was due.

NOTE. — This provision is adapted from section VIII., subsection 1, clause (c) of the British act.

Unless the provision of the law creating a presumption (section VIII., subsection 2, of the British act, section 18 of this act) applies, the burden is upon the workman or his dependents to prove that the disease was due to the nature of his employment within the twelve months preceding disablement. To illustrate: Where a workman has died of lead poisoning shortly after being employed for a few days in a pottery, but the evidence indicates that the disease was contracted solely in other potteries several years before, the burden of proof is not met. *Dean v. Rubian Co.*, 7 B. 209.

But, it seems, that, once it is proved that the disease was contracted in an employment (occupation) within such twelve months, the fact that the workman was during said twelve months engaged in such occupation under several employers, does not place upon him the additional burden of proving that the disease was actually contracted while in the service of the last employer. Cf. *Mallinder v. Moores*, 5 B. 362; *Merry v. Cunningham*, 8 B. 344. In such case the last employer would have to proceed under either section 12 or section 13 of this act. (Section VIII., subsection 1, clauses (c) (ii) and (iii) of the British act).

SECTION 12. *Prior Employer.* — If such last employer alleges that the disease was in fact entirely contracted while the workman was in the employment of some prior employer and not at all while in his employment, he shall join such prior employer as a party to the compensation proceeding and, if the allegation is proved, then that prior employer shall be the one from whom the compensation shall be recoverable.

NOTE. — This provision follows the British act, section VIII., subsection 1, clause (c) (ii).

If the last employer proves that the disease was entirely contracted in a prior employment, and such prior employment terminated more than twelve months before the date of disablement, then no one is liable. See *Dean v. Rubian Co.*, 7 B. 209.

SECTION 13. *Diseases contracted gradually.* — If the disease, which is the cause of the disability or death, was contracted gradually while the workman was with several employers during the twelve months prior to the date of disablement, all said employers shall be severally liable to the workman for their respective shares of the compensation, having regard to the respective lengths of the several employments, the relative risk exposure in each, the earnings of the workman in each and such other matters as may be relevant and material. The workman, however, may recover the total compensation from the last of said employers, and in such case such last employer shall be subrogated to the rights, if any, of the workman against prior employers.

NOTE. — This section follows section VIII., subsection 1, clause (c) (iii) of the British act with considerable modifications.

Under the conditions specified in that subsection the British law permits the workman to proceed only against the last employer and for the entire compensation. We, however, have deemed it advisable to give the workman the option of proceeding either against the last employer alone for the entire compensation, or against each employer severally for his respective share of the compensation.

The British law makes each of the prior employers who during the twelve months preceding disablement "employed the workman in the employment to the nature of which the disease was due" liable to contribute, without proof that such disease was actually contracted while in their respective employments. *Mallinder v. Moores*, 5 B. 362.

We have preferred to make the liability of prior employers to contribute dependent upon proof.

We have followed the British law in limiting to twelve months the period for tracing back responsibility for causation. As a consequence, if a disease is contracted gradually, partly under one employer within the twelve months, and partly under other employers during an earlier period, such last employer

alone would be liable; and for the entire compensation, without right to contribution. *Merry v. McGowan*, 8 B. 344.

As to the rule for measuring the respective contributions from prior employers, the British act is indefinite, but our draft incorporates the rule laid down in *Lees v. Waring*, 2 B. 474 and *Barron v. Seaton Co.*, 8 B. 218.

SECTION 14. *Joinder of Other Employers.* — Any party to a proceeding to recover compensation may join any employer claimed to be liable. The board shall make rules governing the procedure therefor.

SECTION 15. *Information, Penalty.* — The workman, or his dependents, if so requested, shall furnish such last employer or the Board with such information as to the names and addresses of all his other employers during the said twelve months, as he or they may possess; and if such information is not furnished, or is not sufficient to enable such last employer to take proceedings against a prior employer under section twelve, unless it be established that the disease was actually contracted while the workman was in his employment, such last employer shall not be liable to pay compensation, or if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under section thirteen, such last employer shall be liable only for such part of the total compensation as under the particular circumstances the board may deem just; but a false statement in the information furnished as aforesaid shall not impair the workman's rights unless the last employer is prejudiced thereby.

NOTE. — This section follows section VIII., subsection 1, clause (c) (i) of the British act, with considerable modifications to avoid some apparent defects therein and with the addition of the condition laid down in *Burnham v. Taylor*, 3 B. 569.

SECTION 16. *Notice to Employers.* — The employer to whom notice of death or disability is to be given, or against whom claim is to be made by the workman, shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and such notice and claim shall be deemed seasonable as against prior employers.

NOTE. — This provision is taken from section VIII., subsection 1, clause (e) of the British act.

SECTION 17. *Compensation, how calculated.* — The amount of the compensation shall be calculated with reference to the earnings of the workman under the last employer from whom compensation is recoverable.

NOTE. — This provision is taken from the British act, section VIII., subsection 1, clause (d). See Uniform Workmen's Compensation Act, section 15, last paragraph.

SECTION 18. *Presumption as to Cause of Disease.* — If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of the schedule of diseases annexed to this act, and his disease is the disease in the first column of that schedule set opposite the description of the process, the disease shall presumptively be deemed to have been due to the nature of that employment.

NOTE. — This provision substantially follows section VIII., subsection 2, of the British act. The presumption created would not be conclusive, but would merely shift the burden of proof, under the conditions specified, as to the *cause* of the disease. It would establish no presumption as to the *consequences* of the disease, so that, even under the conditions specified, the burden would rest on the claimant to prove that disability or death resulted proximately or ultimately from the disease, it being insufficient that it was caused by a complaint which might or might not have been a sequela of the disease. *Haylett v. Vigor*, 1 B. 282.

As to the meaning of "at or immediately before the date of the disablement," see *Dean v. Rubian Co.*, 7 B. 209; *M'Taggart v. Barr*, 8 B. 376.

SECTION 19. *Diseases which are Accidents.* — Nothing in this act shall affect the rights of a workman to recover compensation in respect to a disease to which this act does not apply, if the disease is a personal injury by accident within the meaning of the uniform workmen's compensation act, to which act this act is a supplement.

NOTE. — This provision is taken from section VIII., subsection 10 of the British act, and is intended to prevent all possibility of this act being construed to be the sole provision for compensation for diseases, thereby abrogating the right under existing compensation laws to compensation for disability or death due to disease incurred "by accident arising out of and in the course of the employment." Under this act in conjunction with the uniform Workmen's Compensation Act, cases of disability or death from disease due wholly or partly to the workmen's occupations, would fall in four categories: (1) diseases, not occupational but by accident, compensable under the accident law; (2) diseases, not by accident but occupational, compensable under the occupational diseases law; (3) diseases, both occupational and by accident, compensable under either law — according to British experience generally claimed for under the occupational diseases law, because of its easier rules of proof; (4) diseases neither occupational nor by accident, not compensable.

SECTION 20. *Disability and Disablement defined.* — In this act disability means the state of being disabled from earning full wages at the work at which the workman was last employed; disablement means the act of becoming so disabled.

NOTE. — The first provision of this section is taken from section VIII., subsection 1, clause (i) of the British act.

For cases on "disability" and proof of disability, see *Jones v. New Brynmally Colliery*, 5 B. 375; *Garnat Collieries v. Rees*, 133 Law Times 329; *Darroll v. Glasgow*, 6 B. 354; *Williams v. Ruabon*, 7 B. 202.

SECTION 21. *Workmen's Compensation Act.* — The provisions of the uniform workmen's compensation act so far as applicable shall apply to cases of disability and death for which compensation is provided by this act.

NOTE. — A review of an award for compensation would be governed by the same rules as an award for injury by accident. See *Williams v. Bwllfa Collieries*, 7 B. 124.

SECTION 22. *Prior Disability or Death.* — The provisions of this act shall not apply to disability or death resulting from a disease contracted prior to the taking effect hereof.

NOTE. — See *Greenhill v. The Daily Record*, 2 B. 244.

SECTION 23. *Rules of Construction.* — (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act. (b) This act shall be so interpreted and construed as to effect its general purpose to make uniform the laws of those states which enact it.

SECTION 24. *Title of Act.* — This act may be cited as the uniform occupational diseases act.

SECTION 25. *Prior Statutes, Repeal.* — All acts and parts of acts inconsistent with this act are hereby repealed.

SECTION 26. *Time of taking Effect.* — This act shall take effect on the first day of _____, nineteen hundred and _____.

NOTE. — The word "workman" in this act under the definition in the uniform Workmen's Compensation Act means either the workman or his dependents.

SCHEDULE OF OCCUPATIONAL DISEASES.

DESCRIPTION OF DISEASES.	DESCRIPTION OF PROCESS.
1. Anthrax,	Handling of wool, hair, bristles, hides and skins.
2. Lead poisoning or its sequelæ, .	Any process involving the use of lead or its preparations or compounds.
3. Mercury poisoning or its sequelæ, .	Any process involving the use of mercury or its preparations or compounds.
4. Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
5. Arsenic poisoning or its sequelæ, .	Any process involving the use of arsenic or its preparations or compounds.
6. Ankylostomiasis,	Mining.
7. Poisoning by nitro-derivatives and amido-derivatives of benzine (dinitro-benzol, anilin and others) or its sequelæ.	Any process involving the use of a nitro-derivative or amido-derivative of benzine or its preparations or compounds.
8. Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Poisoning by nitrous fumes or their sequelæ.	Any process in which nitrous fumes are evolved.
10. Poisoning by nickel carbonyl or its sequelæ.	Any process in which nickel carbonyl gas is evolved.
11. Arsenic poisoning or its sequelæ, .	Handling of arsenic or its preparations or compounds.
12. Lead poisoning or its sequelæ, .	Handling of lead or its preparations or compounds.
13. Poisoning by <i>Gonioma kamassi</i> (African boxwood) or its sequelæ.	Any process in the manufacture of articles from <i>Gonioma kamassi</i> (African boxwood).
14. Chrome ulceration or its sequelæ, .	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
15. Eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	
16. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.	Handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
17. Scrotal epithelioma (chimney-sweeps' cancer).	Chimney-sweeping.
18. Miners' nystagmus,	Mining.

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| 19. Glanders, | Care of any equine animal suffering from glanders; handling the carcass of such animal. |
| 20. Compressed air illness or its sequelæ. | Any process carried on in compressed air. |
| 21. Subcutaneous cellulitis of the hand (beat hand). | Mining. |
| 22. Subcutaneous cellulitis over the patella (miners' beat knee). | Mining. |
| 23. Acute bursitis over the elbow (miners' beat elbow). | Mining. |
| 24. Inflammation of the synovial lining of the wrist joint and tendon sheaths. | Mining. |
| 25. Cataract in glassworkers, . . . | Processes in the manufacture of glass involving exposure to the glare of molten glass. |
| 26. Telegraphist's cramp, . . . | Use of telegraphic instruments. |
| 27. Writer's cramp. | |
| 28. Dope poisoning; that is poisoning by tetrachlor-methane or any substance used as or in conjunction with a solvent for acetate of cellulose or its sequelæ. | Any process in the manufacture of air craft. |

The foregoing schedule is intended to be merely suggestive not exhaustive, and, on the other hand, includes some diseases which possibly ought to be omitted.

It follows literally the British schedule as amended to date except —

(1) Under the British act the processes set down opposite lead poisoning in the schedule are limited to certain processes subject to special health regulations (*cf.* British "Third Schedule").

(2) "Nystagmus" has been changed to "miners' nystagmus," in accordance with the decision in *Scullion v. Cadzow Co.*, 7 B. 833.

(3) The words "caustic or corrosive" in the description of "eczematous ulceration" (No. 15), have been retained, although they are now stricken out of the British schedule by Order of Dec. 2, 1908.

(4) Under the British law, as defined by Order of Dec. 2, 1908, compensation for cataract in glass workers is limited to six months in all and to not more than four months unless an operation for cataract has been undergone.

In his article in the *University of Pennsylvania Law Review* for April, 1917, P. Tecumseh Sherman, Esq., presents, but does not urge, some criticisms of the inclusion in the schedule of the diseases "beat hand," "beat knee," etc., and telegraphist's and writer's cramp.

The schedules in the Ontario and Manitoba acts include only the original six diseases of the British schedule — the first six enumerated in the foregoing schedule.

The Swiss law applies to diseases caused by such "poisonous substances" as shall be specified by the Federal Council. According to our latest information thirty-four such "substances" are now so specified, the thirty-fourth, curiously enough, being "the virus of smallpox, anthrax and glanders."